FitchRatings

Statement of
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To
United States House of Representatives
Committee on Financial Services
Subcommittee on Capital Markets, Insurance
and Government Sponsored Enterprises
June 29, 2005

Introduction

Fitch Ratings traces it roots to the Fitch Publishing Company established in 1913. In the 1920s, Fitch introduced the now familiar "AAA" to "D" rating scale. Fitch was one of the three rating agencies (together with Standard & Poor's ("S&P") and Moody's Investors Service ("Moody's")) first recognized as a nationally recognized statistical rating organization (a so-called "NRSRO") by the Securities and Exchanges Commission (the "Commission") in 1975.

Since 1989 when a new management team recapitalized Fitch, the company has experienced dramatic growth. Throughout the 1990s, Fitch especially grew in the new area of structured finance by providing investors with original research, clear explanations of complex credits, and more rigorous surveillance than the other rating agencies.

In 1997, Fitch merged with IBCA Limited, another NRSRO headquartered in London, significantly increasing Fitch's worldwide presence and coverage in banking, financial institutions and sovereigns. Through the merger with IBCA, Fitch became owned by Fimalac, a holding company that acquired IBCA in 1992. The merger of Fitch and IBCA represented the first step in our plan to respond to investors' needs for an alternative global, full-service rating agency capable of successfully competing with Moody's and S&P across all products and market segments.

Our next step in building Fitch into a global competitor was our acquisition in April 2000 of Duff & Phelps Credit Rating Co., an NRSRO headquartered in Chicago, followed by the acquisition later that year of the rating business of Thomson BankWatch. These acquisitions strengthened our coverage in the corporate, financial institution, insurance, and structured finance sectors, as well as adding a significant number of international offices and affiliates.

Because of Fitch's growth and acquisitions, it today has approximately 1,600 employees, including over 850 analysts, in 49 offices worldwide. Fitch currently covers 3,900 banks, insurance companies and other financial institutions, 1,300 corporations, 91 sovereigns and 73,000 municipal offerings in the United States. In addition, we cover over 8,500 different structured finance securities and structured finance remains one of our special strengths.

Testimony

Set forth below is a summary of our views on the legislative issues concerning rating agencies that the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises intends to consider at its hearing today.

Credit Rating Agency Duopoly Relief Act of 2005 and the Commission Outline

Fitch firmly believes in the power of competition and thus we fully support the objectives of the recently proposed Credit Rating Agency Duopoly Relief Act of 2005, H.R. 2990 (the "Act"), which are to provide greater competition and transparency in the credit rating industry. While we have significant reservations about whether the Act as currently proposed will provide either greater competition or transparency, the Act and the debate surrounding it will serve as a constructive first step in providing a pro-competition market based solution to foster competition in the credit rating industry, as pointed out by both Representatives Oxley and Baker at its introduction. We believe that the key to improving the transparency of the ratings process, while at the same time ensuring the continued reliability of ratings, is to foster competition.

We believe the *Staff Outline of Key Issues for a Legislative Framework for the Oversight and Regulation of Credit Rating Agencies* that was delivered earlier this month to Representative Kanjorski (the "Commission Outline") is not much different in its substance to the existing NRSRO system and the Commission's proposed definition of NRSRO. The most notable difference is the significant increase in the Commission's authority to regulate directly the rating agencies without adequate explanation as to how that regulation would work in practice or an evaluation of how the scheme would actually foster competition, transparency and reliability.

Both the Act and the Commission Outline as proposed impose a substantial and ill-defined regulatory burden on rating agencies, which itself could create a new barrier to entry. As for the Act, it does not provide clear legislative standards by which the Commission would assess the reliability of ratings and decide to approve the registration of a rating organization. We do not believe that increased regulation in a field typically fosters competition and the vague standards for registration will do little to advance a more transparent process at the Commission. The Commission Outline, on the other hand, appears to suggest using the recently proposed definition of NRSRO in a newly proposed registration system. We note that definition of NRSRO is little changed from the way in which the Commission has historically defined NRSRO, which has been criticized as a barrier to entry for new competition in the rating industry. I have attached hereto as Annex A a copy of our comments to the Commission's recently proposed definition of NRSRO. We believe our comments to that proposed definition apply to much of the Commission Outline.

Anticompetitive, Abusive and Unfair Practices

While we commend the provisions of the Act that authorize the Commission to adopt rules to prohibit anticompetitive practices common to the credit rating industry, a provision echoed in the Commission Outline, if Congress believes legislation in this area is appropriate, the legislation should go further by legislatively prohibiting such practices outright.

Fitch believes that our emergence as a global, full-service rating agency capable of competing against Moody's and S&P across all products and market segments has created meaningful competition in the ratings market for the first time in years. Fitch's challenge to the Moody's/S&P monopoly has enhanced innovation, forced transparency in the rating process, improved service to investors and created much needed price competition.

Academic research confirms our belief that innovations in the ratings industry have often "been initiated by the smaller rating firms [Fitch and its legacy firms], with the larger two [Moody's and S&P] then following."[1] At Fitch, we are particularly proud of the work we have done in the development of innovative methodologies to analyze new structured finance securities. These innovations in the securities markets have had substantial economic benefits. For instance, academic research has found that securitization has had a positive impact on both the availability and cost of credit to households and businesses.[2]

Fitch firmly believes in the power of competition. We also believe that there is always a demand for insightful, independent credit research.

As noted at the introduction of the Act, while the NRSRO system is often cited as a barrier to entry for new rating organizations, we believe that the debate over the NRSRO system ignores the single most important barrier to entry in the ratings market: the Moody's/S&P monopolies.

[1] Lawrence J. White, *The Credit Rating Industry: An Industrial Organization Analysis*, June 2001 (paper presented at the conference on "Rating Agencies in the Global Financial System", presented at the Stern School of Business, New York University, June 1, 2001.

[2] Mark M. Zandi, *The Securitization of America*, Regional Financial Review, February 1998; Ali Anari, Donald R. Fraser and James W. Kolari, *The Effects of Securitization on Mortgage Market Yields: A Cointegration Analysis*, Real Estate Economics, 1998.

Moody's and S&P are a dual monopoly, each possessing separate monopoly power in a market that has grown to demand two ratings. Each engages in practices designed to perpetuate its market dominance and extend it to otherwise competitive markets such as structured finance. As we have publicly stated for several years, through their discriminatory practice known as "notching," Moody's and S&P successfully alter competition in the commercial and residential mortgage–backed securities markets by leveraging their monopoly position in other markets.

If Congress wishes to address barriers to entry in the ratings market and ensure robust competition, legislation should be adopted that prohibits anticompetitive conduct by rating agencies outright including prohibiting rating agencies from discriminating against the ratings by other rating agencies for the purpose of preserving market share. Fitch believes that this is an area that would benefit from legislation to protect rating agency competition. Fitch believes that any rating agency found to be using anticompetitive practices or unfair business practices should be subject to a full range of appropriate sanctions.

Recognition/Registration Process and Criteria

If Congress believes a registration or recognition system is necessary, we believe that any legislation creating such a system should formalize the process by which a rating agency is either registered or recognized. The application process, specific criteria to be used for recognition or registration and time frames for action on all applications should be specified in the legislation and detailed in appropriate regulations. We believe public comment should be solicited on applications and an appropriate appeal process should be put in place.

As noted above, we believe that the Act does not provide clear legislative standards by which the Commission can assess the reliability of ratings and decide to approve the registration of a rating organization. Indicators of reliability, including a proven track record, should be the key because the public interest will not be served if the ratings of agencies without such a proven record are let loose on the public or indiscriminately used in safety and soundness regulations. Legislation should foster a well-designed regulatory system that should deter rating agencies from competing by issuing more favorable ratings than other rating agencies. It is easy to give favorable ratings to garner favor, and revenue, from issuers and investors. It is difficult to compete and grow while maintaining rigorous credit standards. Such a highly permissive approach to registration would also make less likely the achievement of the pro-competition objectives of Congress because such an environment is likely to strengthen the market position of the existing duopoly.

When considering the reliability of an organization's ratings, we believe the Commission should evaluate the default and transition experience of each one's ratings against a benchmark reflecting the aggregate, historical default and transition rates of all ratings issued by the rating agencies in the market. Ultimately, we believe the performance of ratings over time relative to the performance of other rating systems is still the best judge of a rating agency.

<u>Oversight and Enforcement</u>

We also note that the Act implicitly provides the Commission with the authorization to regulate the substantive decision-making process of rating agencies, and the content of the ratings they assign, through unfettered examination and inspection authority. This authority goes beyond the authority that even the staff of the Commission has suggested is appropriate in the Commission Outline. In the Commission Outline, the Commission staff acknowledged that the "legislation should not, however, regulate the substantive decision-making of rating agencies or the content of the ratings they assign."

As the Commission Outline provides, any legislation in this area must, for legal and policy reasons, make clear that the decision-making process of rating agencies and the content of the ratings assigned are beyond the scope of any legislative or regulatory scheme. To do otherwise would greatly compromise the independence of the rating agencies, whose business is to gather information and publish independent opinions about that information, and will have a chilling effect on their ability to provide views of the credit of the companies they rate that are not managed by government in matters of either process or outcome.

Fitch acknowledges that the Commission's right to revoke recognition of any NRSRO that no longer meets the criteria for recognition may not be an adequate remedy, due to the all-or-nothing nature of such a sanction. Given the importance of unbiased credit ratings in the financial markets, we believe oversight and enforcement authority in matters such as conflict of interest and integrity are important. Beyond this, as we commented to the Commission in connection with their concept release and proposed rule on recognition, we believe that examination and oversight of the rating agencies should be focused principally on the performance of the organization's ratings over time relative to the performance of other rating systems.

We believe any oversight should be narrowly tailored so as to intrude as little as possible on the independence of rating agencies. In this way undue regulatory burden will be avoided and rating agencies will retain the flexibility in the ratings process, as well as the breathing space, for making the independent judgments that are critical to objective and timely ratings.

Within this framework, if Congress believes oversight is appropriate, legislation should provide a narrowly tailored oversight scheme specifically developed for rating agencies. We do not believe that the existing regulatory schemes under the Exchange Act or under the Investment Advisers Act are a plausible fit, however, as agencies function in a unique way to provide analysis and opinion and not as investment advisers, broker-dealers, clearing agencies, security exchanges or other regulated entities.

In the same vein, it would be unsound to seek to impose on rating agencies a diligence requirement either for creating a private right of action or for oversight purposes. Even putting aside the significant and in our view insurmountable issues of the constitutionality of imposing on those who publish information important to the public liability based on negligence, as already noted, rating agencies do not now audit or verify the information on which they rely and to impose such a requirement would duplicate the work of the various professionals (auditors, lawyers, investment bankers and fiduciaries) upon whom the law does place certain obligations of diligence and due care.

Unsolicited Ratings

Issuers and others have expressed concerns that certain practices regarding unsolicited ratings may be anticompetitive or constitute unfair practices. While there have been allegations of abuse leveled against the dominant agencies in the past, Fitch does not believe that the issuance of such ratings is inappropriate.

We believe it is important to the market that rating agencies be allowed to publish opinions on issuers they determine to be of interest to the investing public. We also believe this is extremely important to ensuring competition with Moody's and S&P for investor interest.

Moody's and S&P are so dominant that the market has grown to expect always to see their two ratings on every issue. Issuers believe that they must request and pay for ratings from Moody's and S&P. Their rating practices reinforce this. The cornerstone to competing with Moody's and S&P is building an investor following. Without it, you cannot attract interest from issuers. To get the attention of investors a rating agency must demonstrate that it has the breadth of coverage investors perceive Moody's and S&P possess. Without adequate coverage, you cannot build an investor following.

In 2001, Fitch introduced its Fitch Initiated Ratings program. Fitch Initiated Ratings target high-profile market participants or issuers about which there is a discrepancy in market opinions not traditionally rated by Fitch. Ratings initiated under this program are identified as such in the original publication concerning the rating. Fitch will only publish a Fitch Initiated Rating if we conclude that there is sufficient information available to us to allow us to express our opinion, and in all cases, such ratings are uncompensated and Fitch does not assess or seek fees for the analysis done in connection with these ratings. Fitch Initiated Ratings allow Fitch to get investor attention.

There is no difference in the analytical process or criteria used for Fitch Initiated Ratings, although the level of management involvement varies. Procedures relative to the publication of the ratings are also no different and we contact the issuer prior to publishing a new rating or subsequent rating action in accordance with our regular practices.

We believe that any legislative or regulatory action with respect to rating agencies must recognize that rating agencies seeking to compete with the market dominance of Moody's and S&P need to issue unsolicited ratings to ensure their ability to compete, while at the same time ensuring that no agency uses unsolicited ratings as a means to extract payment from an unwilling issuer.

<u>Ratings Are a Reliable Indicator of Risk</u>

One unfortunate misperception embodied in both the Act and the Commission Outline is that the failure to detect fraud at Enron and Worldcom is evidence that rating agencies have failed in their mission to provide an easy to use, efficient and reliable system by which investors can assess the credit risk of a variety of investments. While we do believe that increased competition will foster transparency, improve responsiveness, reduce costs and increase the value that rating agencies provide the users of their ratings, results that are usually achieved through increased competition, the reliability of ratings at all major agencies over a long history remains incontrovertible.

Though we in no way wish to belittle the tragedy of Enron and Worldcom, rating agency critics continually emphasize how the ratings agencies "missed" Enron and Worldcom. The criticism tends to ignore the reality of Enron and Worldcom, which is that a number of dishonest insiders conspired to perpetrate a massive financial fraud. Rating agencies were among those deceived by these frauds because, as we tell all our users, we rely on the accuracy of the information we are provided by issuers and their advisors and do not audit or verify that information.

We believe the reality is that credit ratings can assess credit risk in the overwhelming majority of cases and have proven to be a reliable indicator for assessing the likelihood that a security will default. The performance of our credit ratings over time is demonstrable and measurable by the default and transition studies we regularly publish.

Fitch's most recent corporate bond and structured finance default studies are summarized below.

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Fitch Average Annual Default Rates

	Corporate Finance* 1990 - 2004	Structured Finance** 1991 - 2003
AAA	0.00%	0.00%
AA	0.00%	0.01%
A	0.04%	0.02%
BBB	0.30%	0.11%
BB	1.51%	0.48%
B	1.84%	1.15%
CCC - C	24.32%	15.57%
Investment Grade	0.10%	0.03%
Non Investment Grade	3.48%	1.54%

* Based on Fitch-rated global corporate debt issuers.
** Based on Fitch-rated U.S. structured finance bonds.

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The performance of ratings by the three major rating agencies is quite similar. We believe this similarity results from the common reliance on fundamental credit analysis and the similar methodology and criteria supporting ratings.

Rating agencies gather and analyze a variety of financial, industry, market and economic information, then synthesize that information and publish independent, credible assessments of the creditworthiness of securities and issuers, thereby providing a convenient way for investors to judge the credit quality of various alternative investment options. Rating agencies also publish considerable independent research on credit markets, industry trends and economic issues of general interest to the investing public.

By focusing on credit analysis and research, rating agencies can provide credible and professional analysis for investors more efficiently than investors could perform on their own.

We currently have hundreds of institutional investors, financial institutions and government agencies subscribing to our research and ratings, and thousands of investors and other interested parties that access our research and ratings through our free web site and other published sources and wire services, such as Bloomberg, Business Wire, Dow Jones, Reuters, and The Wall Street Journal.

In addition to their ease of use, efficiency and widespread availability, we believe that credit ratings are most useful to investors because they allow for reliable comparisons of credit risk across diverse investment opportunities.

Through the years, ratings have also been increasingly used in safety and soundness and eligible investment regulations for banks, insurance companies and other financial institutions. While the use of ratings in regulations has not been without controversy, we believe that regulators rely on ratings for the same reason that investors do: ease of use, widespread availability and proven performance over time.

Although one can use other methods to assess the creditworthiness of a security, such as the use of yield spreads and price volatility, we believe that, while valuable, such methods lack the ease of use, stability and record of performance to supplant ratings as the preferred method used by investors to assess creditworthiness.

However, in our view the market is the best judge of the value of ratings. We believe that if ratings begin to disappoint investors they will stop using them as a tool to assess credit risk, and the ensuing market demand for a better way to access credit risk will rapidly facilitate the development of new tools to replace ratings and rating agencies.

For all of these reasons, we believe that rating agencies do a good job of meeting the needs of investors and that it is important for any dialogue about how to improve ratings to focus on ways to build upon the considerable record of reliability of ratings over time.

Conclusion

We hope that you will consider our comments on the Act and the Commission Outline and hope to have the opportunity to continue discussing the important issues raised that profoundly affect Fitch, our industry and the capital markets. Thank you for your consideration of our views.

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June 9, 2005

BY ELECTRONIC MAIL

Mr. Jonathan G. Katz
Secretary
United States Securities and Exchange Commission
450 5th Street, NW
Washington, D.C. 20549-0609

Re: *File No. S7-04-05*
Proposed Rule: Definition of Nationally
Recognized Statistical Rating Organization

Dear Sir:

This letter is submitted by Fitch, Inc. ("Fitch") in response to the request for comments of the Securities and Exchange Commission ("SEC" or the "Commission") to the proposed rule *Definition of Nationally Recognized Statistical Rating Organization* (Release Nos. 33–8570; 34–51572; IC–26834, the "Proposed Rule").

Introduction

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Since 1989 when Fitch was recapitalized by a new management team, Fitch has experienced dramatic growth. Throughout the 1990's, Fitch especially grew in the new area of structured finance, by providing investors with original research, clear explanations of complex credits, and more rigorous surveillance than the other rating agencies.

In 1997, Fitch merged with IBCA Limited, another NRSRO headquartered in London, significantly increasing Fitch's worldwide presence and coverage in banking, financial institutions and sovereigns. Through the merger with IBCA, Fitch became owned by Fimalac, a holding company that acquired IBCA in 1992. The merger of Fitch and IBCA represented the first step in our plan to respond to investors' need for an alternative global, full-service rating agency capable of successfully competing with Moody's and S&P across all products and market segments.

Our next step in building Fitch into a global competitor was our acquisition of Duff & Phelps Credit Rating Co., an NRSRO headquartered in Chicago, in April 2000 followed by the acquisition later that year of the rating business of Thomson BankWatch. These acquisitions strengthened our coverage in the corporate, financial institution, insurance and structured finance sectors, as well as added a significant number of international offices and affiliates.

Because of Fitch's growth and acquisitions, it today has approximately 1,600 employees, including over 850 analysts, in 49 offices worldwide. Fitch currently covers 3,900 banks, insurance companies and other financial institutions, 1,300 corporations, 91 sovereigns and 73,000 municipal offerings in the United States. In addition, we cover over 8,500 issues in structured finance, which remains our traditional strength.

The Proposed Definition of NRSRO

Through the years, NRSRO ratings have been increasingly used in safety and soundness and eligible investment regulations for banks, insurance companies and other financial institutions. While the use of ratings in regulations has not been without controversy, we believe that regulators, including the SEC, have relied on NRSRO ratings for the same reason that investors do: ease of use, widespread availability and proven performance over time.

The proposed definition of NRSRO reflects many years of discussion and debate over the topic of rating agency recognition and thirty years of experience actually recognizing various NRSROs by the SEC staff. We commend the SEC's balanced approach to the subject matter and manifest desire to show all sides of the issues highlighted in the Proposed Rule. We believe that the Proposed Rule presents a recognition system that, while not without issues, ensures that recognized organizations possess the competence to develop reliable ratings and protects against the establishment of rating organizations that would issue inflated ratings in an effort to achieve short-term competitive gain.

Set forth below are our comments on the Proposed Rule and answers to those questions for which we believe we can add to the dialogue on these important issues.

The First Component

Publicly Available Credit Ratings. *How should it be determined whether an NRSRO is making its credit ratings readily available on a widespread basis? Should our* *rule specify the manner and methods that must be used to distribute ratings? Should internet posting itself be sufficient?*

We believe that the Proposed Rule appropriately conditions recognition upon the widespread dissemination of public ratings at no cost.

Fitch believes strongly in transparency in the ratings process. Accordingly, Fitch makes available free of charge on our web site all of our outstanding public ratings. Fitch also distributes announcements of public ratings actions through a variety of wire services. In addition, there are hundreds of criteria reports published highlighting the methodology we use to rate various types of entities and securities, together with detailed sector analysis on a broad array of sectors, companies, and issues, all available free on our web site (www.fitchratings.com). Fitch has also been a leader in publishing so-called presale reports in the areas of structured finance, global power, project finance and public finance where our published analysis of various transactions of interest to the market is made available free of charge on our web site prior to the pricing of the transaction.

We believe that the SEC should also consider when recognizing a rating agency the transparency of its process as evidenced by the availability of criteria and methodology reports and, of equal importance, annual publication of transition and default studies setting forth the performance of ratings over time by ratings categories or other statistical studies that demonstrate reliability.

Although Fitch believes that best practices for a rating agency ought to include making announcements of initial public ratings and subsequent rating actions available to wire services and similar media channels to assure the widest distribution, making public credit ratings available on a free web site should be sufficient for meeting the criteria of issuing publicly available credit ratings.

Issue-Specific Credit Opinions. *Should a credit rating agency that does not rate specific securities or money market instruments be included in the definition of NRSRO? If so, under what circumstances?*

This is a question best answered by the users of ratings. Fitch publishes both issuer and issue-specific ratings because we believe that investors find both valuable in understanding creditworthiness. If an investor uses ratings to allocate capital to a specific security owned, then it seems appropriate to use issue-specific ratings for that purpose as the risk of loss given default can vary among different securities issued by the same issuer. Investors, however, use credit ratings for a variety of purposes including assessing both the probability of default and loss given default.

Current Credit Opinions. *Should the Commission provide additional interpretation regarding what it means for a credit rating agency's credit ratings to be "current assessments"? Should the Commission specify the time period? Will the* *proposed rule's provisions provide sufficient assurance to the markets that ratings are current?*

Fitch agrees that unless credit ratings reflect "current assessments" of creditworthiness they are of limited utility to the user of the credit ratings. Fitch believes that the SEC should consider what procedures a rating agency has in place to ensure that its ratings are reviewed, and if needed, updated to reflect the occurrence of material events and that the rating agency follows those procedures. Fitch has such procedures in place and follows them in order to ensure that our ratings are a current assessment of creditworthiness, except in the rare circumstance where we issue a credit rating that does not entail ongoing surveillance (so-called "point-in-time ratings").

We do not believe, however, that the SEC should identify a specific time period for such review or provide additional interpretation regarding the meaning of "current assessments." Instead, we believe that whether a credit rating is a "current assessment" of creditworthiness, and all issues relating to the reliability of credit ratings, are best judged by the organization demonstrating the performance of their ratings over time by publication of actual default rates experienced in rating categories and transition studies showing the movement of ratings over time or through other statistical studies that demonstrate reliability. When considering a rating organization for possible recognition, we believe the SEC should evaluate the default and transition experience of each organization's ratings against a benchmark reflecting the aggregate, historical default and transition rates of all ratings issued by rating agencies in the market[3]. Ultimately, we believe that recognition should be reserved for those organizations that prove the performance of their ratings over time relative to the performance of other rating systems. We believe this is the most effective manner in which to ensure that credit ratings are "current."

The Second Component

General Acceptance in the Financial Markets. *How else could the Commission define the term "NRSRO" in order for users of a credit rating agency's ratings to determine whether such ratings are credible and are reasonably relied upon by the marketplace? Are the approaches discussed above useful for determining whether a credit rating agency meets the second component of the proposed definition? Are there other types of information that would be appropriate? For example, should the fact that a credit rating agency has many subscribers support a finding that the credit rating agency satisfies the second component? What types of statistical data could be relied on to determine if a credit rating agency's credit ratings are relied on by the marketplace? What standards should be considered to assess such statistical data? Should the views of issuers be a relevant consideration in determining whether a credit rating agency meets the second component of the NRSRO definition?*

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[3] For a further discussion of the use of benchmarks in evaluating ratings, *see The New Basel Accord (April 2003),* Basel Committee on Banking Supervision, Bank for International Settlements.

One criticism of the NRSRO system is that it poses a barrier to entry for new entrants. Currently in the United States, ratings by new entrants typically do not satisfy investing criteria for regulated institutional and other corporate investors unless the SEC recognizes the entrant as an NRSRO. Recognition requires that these institutional and corporate investors generally accept a credit rating agency as an issuer of credible and reliable ratings. This situation creates a challenge for the new entrant: how do you build acceptance among investors before recognition? In light of the recognition of six new NRSROs since the SEC recognized the original three NRSROs in 1975, a rating agency clearly can achieve acceptance absent formal recognition. Admittedly, the requirements to achieve NRSRO status pose some barriers to entry, but these barriers are necessary to fulfill the important purpose of ensuring that the recognized agencies demonstrate the performance necessary to create a reliable ratings system.

While Fitch believes that the criteria for recognition should include an evaluation of the extent to which market participants use an organization's ratings, as we note above, we believe the most important criteria to demonstrate that an organization is an issuer of credible and reliable ratings is the performance of their ratings over time. An organization can demonstrate the performance of ratings over time by publishing actual default rates experienced in rating categories and transition studies showing the actual movement of ratings over time or through other statistical studies that demonstrate reliability. We believe performance-based criteria are more objective and pose less of a barrier to entry than a general acceptance criterion.

Limited Coverage NRSROs. *Should a credit rating agency that is recognized by the financial marketplace for issuing credible and reliable ratings within a limited sector or geographic area meet the NRSRO definition only for its ratings within such sector or geographic area, or more broadly? If a credit rating agency meets the NRSRO definition only with respect to its ratings within a particular sector or geographic area, would the NRSRO classification interfere with the credit rating agency's ability to expand its business? How should ratings from such an NRSRO be identified so that broker-dealers and other users of NRSRO ratings for regulatory purposes can determine which credit ratings from the NRSRO may be used for regulatory purposes? We noted above that commenters mentioned that it would be difficult for limited coverage NRSROs to provide a full and accurate assessment of credit risks without a broader expertise in credit risk assessment. We request further comment on this view given our proposal to permit limited coverage NRSROs.*

We believe that the SEC should continue the practice of limited recognition that acknowledges the special expertise of smaller organizations in selected areas of specialty or geographic regions such as the prior recognition afforded to IBCA and BankWatch for their expertise in financial institution analysis. We do not believe, however, that organizations that are recognized for a specific expertise ought to be afforded full recognition unless, and until, they can demonstrate through default rates, transition studies or other statistical studies that their ratings in all areas are credible and reliable.

We do not believe that demonstrating expertise in one or two sectors or geographic areas should be sufficient for broad recognition.

If the SEC decides to grant limited recognition, we believe that it is reasonable to expect the users of an organization's ratings to be responsible for knowing the extent to which an organization is recognized.

The Third Component

Analyst Experience and Training. *The Commission recognizes that the evaluation of an analyst's experience would involve a degree of subjectivity. The Commission requests comment on the appropriate subjective criteria that a credit rating agency should use in assessing the experience and training of an analyst to meet the proposed NRSRO definition. In addition, what objective criteria are relevant? What level of importance should be given to the subjective and objective criteria? How can a credit rating agency in seeking to meet the proposed NRSRO definition demonstrate that it has adequate procedures designed to ensure that its analysts are competent? What factors should a credit rating agency consider in evaluating the background of its analysts and other members of its staff?*

Number of Ratings per Analyst. *Is the concern that a credit rating agency's ratings may become less reliable as the number of issues rated per analyst increase valid? If so, what type of workload is reasonable for the analytical quality of a credit rating agency's ratings to remain high? Should the Commission specify minimum standards for a credit rating agency's analysts to continuously monitor and assess relevant developments relating to their ratings so that users of the credit rating agency's ratings can determine whether the credit rating agency meets the NRSRO definition? If a credit rating agency relies primarily on quantitative models to develop credit ratings, how can such a firm's ratings reflect a thorough analysis of the specific credit characteristics of a particular security? Should the Commission require credit rating agencies to disclose the number of credit analysts they employ and the average number of issues rated or otherwise followed by those analysts, as suggested by commenters?*

While Fitch is committed to recruiting well-qualified professionals and providing ongoing, high-quality training, we believe that the criteria related to analyst's qualifications and number of ratings per analyst are attempts to use subjective, difficult to articulate standards to assess whether an organization issues reliable ratings when objective statistics can be used to demonstrate the reliability of ratings. Once again, we believe this is an area where the recognition criteria can best serve the market by focusing on the demonstrable performance of an organization's ratings over time.

Credit rating organizations employ a multidisciplinary professional staff combining people with expertise in economics, finance, accounting, law, statistics, mathematics and computer science, as well as diverse industry and sector experience. Unlike accounting, law and engineering where there is a common set of educational and professional credentials, it is extremely difficult to identify particular terminal degrees, professional qualifications or certifications needed to succeed in an organization as diverse as Fitch. Many of our employees are certified public accountants, chartered financial analysts and lawyers, while others have no professional designations. While many of our employees hold master degrees in business and related fields, our employees' educational attainment ranges from entry level employees with bachelor degrees in the arts or social sciences to employees with doctorates. For these reasons, it would be difficult to devise a standard set of qualifications.

As to the number of ratings per analyst, we agree with the view generally shared by the commenters to the Concept Release that the number of analysts and the number of issues per analyst are best left to the credit rating agencies. In simple terms, an analyst covering a smaller number of ratings should be more effective than a similarly skilled and trained analyst covering a larger number of ratings. Technology, the experience of the analyst, the number of published commentaries the analyst is expected to author, the number of analysts in the sector and the size, complexity and transparency of the sector covered by the analyst all lead to significant variation in the number of ratings per analyst from sector to sector within an organization. For these reasons, we believe that the average number of ratings per analyst can be misleading and of limited relevance to the overall reliability of an organization's ratings.

With respect to evaluating the background of analysts, Fitch agrees that it is appropriate for credit rating organizations to have policies in place to ensure that we do not hire people of compromised integrity and that credit rating organizations have procedures in place to evaluate the background of the people they hire. Fitch has such a policy in place as well as procedures to evaluate the background of our prospective employees.

Information Sources Used in the Ratings Process. *Should a credit rating agency be required to test in some way the integrity of information provided directly by issuers (both public and nonpublic) and through third party vendors? Are there other appropriate objective methods for determining whether a credit rating agency has reasonably tested the integrity of the information on which it bases its ratings?*

Fitch believes that it would be inappropriate to require that rating agencies test or verify the data supplied to us from issuers or any other source. Fitch does not audit or verify any information provided to us and we believe that our position is the same as other leading rating agencies. We have always made our position publicly known and we have disclosed our position in our ratings definitions, in our code of conduct, in several places on our web site and in the disclosures that appear on our publications.

We believe that the SEC's proposal with respect to the information sources used by the rating agencies is unsound, as it appears to seek to impose a diligence requirement on rating agencies either for purposes of creating a private right of action or for oversight purposes. Even putting aside the significant and in our view insurmountable issues of the constitutionality of such an approach under the First Amendment, rating agencies do not now audit or verify the information on which they rely. To impose such a requirement would duplicate the work of the various professionals (auditors, lawyers, investment bankers and fiduciaries) upon whom the law places certain obligations of diligence and due care.

In addition, we firmly believe that existing antifraud remedies are sufficient to address rating agencies intentionally or recklessly making material misstatements of fact.

Contacts with Management. *In designing and implementing systematic procedures to ensure credible and reliable ratings, should a credit rating agency seeking to meet the definition of NRSRO address how and the extent to which it involves an issuer's senior management in the rating process? To meet the proposed NRSRO definition, should a credit rating agency's procedures require that the credit rating agency request an issuer's senior management to participate in the credit rating agency's rating process without incurring a fee?*

While access to nonpublic information and senior levels of management at an issuer is beneficial, a reliable opinion about the creditworthiness of an issuer can be formed based solely on public information in many jurisdictions and, in particular, in the United States. Typically, it is not the value of any particular piece of nonpublic information that is important to the rating process, but that access to such information and senior management can assist us in forming a qualitative judgment about a company's management and prospects. Even in cases where there is no direct involvement of a company's senior management in a rating, analysts often have the opportunity to hear from and, occasionally, question senior management through participation in open conference calls and at industry and trade conferences.

It also appears to Fitch that this proposed recognition criterion can be perceived as detracting from the value of ratings done solely on the basis of publicly available information without the involvement of the issuer, which we believe creates significant competitive issues. Since Moody's and S&P are so dominant, many issuers believe that they must cooperate with, and pay rating fees to, Moody's and S&P. In order to compete with Moody's and S&P, other rating agencies must build an investor following. Without an investor following, a rating agency is unlikely to get cooperation from issuers. To build a following among investors, a rating agency must demonstrate that it has the breadth of coverage investors perceive Moody's and S&P possess. Without adequate coverage, a rating agency cannot build a following with investors. Since issuers are significantly less likely to cooperate with a smaller rating agency, the only way that a smaller rating agency can increase coverage is to rate issuers and issues based on publicly available information. Since there is no evidence that ratings based on publicly available information are inferior to interactive ratings, we do not feel it is appropriate to undermine the credibility of ratings based on publicly available information and thereby harm competition.

Fitch does agree, however, that best practices dictate that a rating agency should encourage management at an issuer to participate in the rating process without regard to whether or not the issuer pays rating fees.

In 2001, Fitch introduced its Fitch Initiated Ratings program. There is no difference in the analytical process or criteria used for Fitch Initiated Ratings, although the level of management involvement varies. Procedures relative to the publication of the ratings are also the same and we contact the issuer prior to publishing a new rating or subsequent rating action in accordance with our regular practices. Fitch will only publish a Fitch Initiated Rating if we conclude that there is sufficient information available to us to allow us to express our opinion, and in all cases, such ratings are uncompensated and Fitch does not assess or seek fees for the analysis done in connection with these ratings. Fitch Initiated Ratings target high-profile market participants or issuers about which there is a discrepancy in market opinions not traditionally rated by Fitch. Ratings initiated under this program are identified as such in the original publication concerning the rating. We believe our program is well-designed to enhance our coverage of important issuers and issues while providing an issuer every opportunity to participate in the rating process without regard to the payment of rating fees.

Organizational Structure. *Would information on a credit rating agency's organizational structure be useful to users of ratings? If so, what information would be useful?*

We believe how we structure our business and what we do from a structural standpoint to mitigate potential conflicts are relevant to users of ratings. Fitch would be happy to disclose any information about our organizational structure that the SEC might reasonably request of us to the extent that we do not already publicly disclose it.

We believe that it is important that rating agencies separate rating services from affiliated businesses. Accordingly, Fitch has in place a firewall policy with respect to affiliated businesses and affiliated businesses within the Fitch Group are contained in entities that are both legally and operationally separate from the rating business. Our firewall policy is available on our free web site www.fitchratings.com under the heading *Code of Conduct*.

Conflicts of Interest. *What specific conflicts of interest should be addressed in a credit rating agency's procedures and how should they be addressed? Should a credit rating agency that engages in activities that present potential or actual conflicts of interest be excluded from the definition of NRSRO? Alternatively, is it sufficient for a credit rating agency to impose and implement safeguards to prevent potential conflicts of interest from affecting the quality and independence of its credit ratings? Are there other practices that raise concerns similar to those raised by conflicts of interest, for example, those referred to in footnote 93 regarding unsolicited ratings, that should be addressed in a credit rating agency's procedures?*

The most often cited potential conflict of interest that an NRSRO must manage is the fact that the current NRSROs derive a significant portion of their revenue from the ratings fees charged to issuers of rated securities. Fitch does not believe that the fact that issuers generally pay the rating agency's fees creates an actual conflict of interest, i.e., a conflict that impairs the objectivity of the rating agency's judgment about creditworthiness reflected in ratings. Rather, it is more appropriately classified as a potential conflict of interest, i.e., something that should be disclosed and managed to assure that it does not become an actual conflict. We believe the measures Fitch (and, on belief, the other agencies as well) has in place to manage the potential conflict adequately prevent an actual conflict of interest from arising.

The practice of charging a fee to the issuer for the analysis done in connection with ratings dates back to the late 1960s. It is widely known by investors, who are the ultimate consumers of the rating agency product.

By way of context, Fitch's revenue comes from two principal sources: the sale of subscriptions for our research and fees paid by issuers for the analysis we conduct with respect to ratings. In this we are similar to other members of the media which derive revenue from subscribers and advertisers that include companies they cover. Like other journalists, we emphasize independence and objectivity because our independent, unbiased coverage of the companies and securities we rate is important to our research subscribers and the marketplace in general.

Fitch goes to great efforts to assure that our receipt of fees from issuers does not affect our editorial independence. We have a separate sales and marketing team that works independently of the analysts that cover the issuers. We believe that rating agencies must have in place policies and procedures to manage the potential conflict presented by the issuer pays model. Fitch has in place a written policy concerning fee discussions and negotiations that is set forth in our code of conduct, which is available on our free web site www.fitchratings.com under the heading *Code of Conduct*.

We also manage the potential conflict through our compensation philosophy. The revenue Fitch receives from issuers covered by an analyst is not a factor in that analyst's compensation. Instead, an analyst's performance, such as the quality and timeliness of research, and Fitch's overall financial performance determine an analyst's compensation. Similarly, an analyst's performance relative to his or her peers and the overall profitability of Fitch determine an analyst's bonus. The financial performance of analysts' sectors or groups do not factor into their compensation. Our policy concerning analyst compensation is also set forth in our code of conduct.

Fitch does not have an advisory relationship with the companies it rates. It always maintains full independence. Unlike an investment bank, our fees are not based on the success of a bond issue or tied to the level of the rating issued. The fee charged an issuer does not go up or down depending on the ratings assigned or the successful completion of a bond offering.

Our fee is determined in advance of the determination of the rating and we do not charge a fee for a rating unless the issuer agrees in advance to pay the fee. While we do assign ratings on an unsolicited basis, we do not send bills for unsolicited ratings. Any issuer may terminate its fee arrangement with Fitch without fear that its rating will be lowered, although we do reserve the right to withdraw a rating for which we are not paid if there is insufficient investor interest in the rating to justify continuing effort to maintain it.

Fitch believes that the disclosure of the arrangement by which an issuer pays fees to Fitch in connection with Fitch's ratings of the issuer is appropriate. Accordingly, Fitch currently discloses that it receives fees from issuers in connection with its ratings as well as the range of fees paid. This has been our practice for sometime.

Rating agencies must also guard against subscribers having preferential access to information about a rating action before it is available to the general public. Fitch takes great efforts to ensure that all members of the public have access to our public ratings and may discuss these ratings with our analysts, whether or not those interested parties are subscribers.

To guard against preferential access to ratings information, Fitch believes all public ratings and rating actions should be widely disseminated through web sites and, preferably, international wire services, as well. Except for prior notification to the issuer of a rating or rating action, Fitch never selectively discloses ratings and rating actions to any subscriber or any other party. As described above, Fitch's public ratings and related publications, including those detailing rating actions, are widely available through our public web sites and wire services free-of-charge and there are no prior communications of rating actions to subscribers.

Rating agencies also must thoroughly separate affiliates from the ratings business. There must be appropriate safeguards in place to prohibit the marketing by affiliates of non-rating products and services to issuers from influencing ratings in any way. Fitch has adopted a formal firewall policy that addresses a number of issues relating to the products and services offered by affiliates of Fitch Ratings to issuers and others. As part of that policy, we restrict ratings analysts from marketing or recommending any affiliate's products or services or to suggest or create the inference that the use of, or failure to use, any such products will affect the issuers' ratings. Our firewall policy is available on our free web site www.fitchratings.com under the heading *Code of Conduct*.

Fitch also agrees that rating agencies must have in place policies and procedures to assure that so-called unsolicited ratings are issued in a fair and balanced manner. We have such policies and procedures in place. Our policies and procedures relating to Fitch Initiated Ratings are described above under the heading *Contacts with Management*.

A final area of potential conflict where rating agencies ought to maintain strict policies and procedures is the management of the financial and personal interests of its analysts. While Fitch acknowledges that full disclosure of financial and personal interests by analysts can be an appropriate way to manage the conflicts presented by these interests, Fitch has chosen to prohibit its analysts from being involved in any rating action in which they have a financial or personal interest. Accordingly, Fitch prohibits its analysts from participating in any rating action if the analyst, or any member of the analyst's immediate family, own any security in the issuer. Our policy relating to employee conflicts of interest is available on our free web site www.fitchratings.com under the heading *Code of Conduct*.

In conclusion, we believe it is possible for rating agencies to manage the potential conflicts that they face, but rating agencies must have robust policies and procedures in place to manage these conflicts and the infrastructure in place to monitor and enforce those policies and procedures.

Misuse of Information. *As discussed above, to meet the third component of the NRSRO definition, should a credit rating agency demonstrate that it has systematic procedures designed to prevent the misuse of material nonpublic information? What types of procedures are reasonable for a credit rating agency to protect material nonpublic information? Should a credit rating agency have personnel dedicated specifically to verifying employees' compliance with such procedures? Should persons performing this function provide ongoing training of employees and act as a resource to answer questions as they arise? Should the procedures provide for a system by which employees can report violations of the controls in place to protect nonpublic information or other inappropriate activities? The Commission encourages commenters to provide information on appropriate procedures for receiving and adequately securing material nonpublic information.*

We believe that it is imperative that rating agencies have in place policies and procedures designed to prevent the misuse of nonpublic information. We also agree that rating agencies ought to have a compliance function, to provide specific training to its employees in the compliance area and to provide a means by which employees can report violations of policies and procedures without fear of reprisal. Fitch has in place a compliance function, offers regular training on compliance issues and provides employees with a means by which they can report compliance breaches that we are in the process of making totally anonymous at the employee's option. Our policies on confidentiality and compliance are set forth in our code of conduct and related policies, all of which are available on our free web site www.fitchratings.com under the heading *Code of Conduct*.

<u>Financial Resources</u>. *Should a credit rating agency make its audited financial statements readily available to users of securities ratings in order for such users to assess whether a credit rating agency has sufficient financial resources to satisfy the third component? What other types of financial information could a credit rating agency make available to users of securities ratings for purposes of the third component? Should a credit rating agency provide users of securities ratings with information relating to the percentage of revenue it receives from particular issuers or subscribers as compared to the credit rating agency's total revenues? Should a credit rating agency establish procedures to limit the percentage of revenues it receives from a single issuer or subscriber? How else can it be determined that a credit rating agency is financially independent of both subscribers and rated issuers?*

Fitch is a subsidiary of Fimalac, a French public company, and as such our financial results are publicly reported in Fimalac's annual and periodic reports, which are published in English, as well as French. There is already a hyperlink from Fitch's web site to Fimalac's web site, on which you can find Fimalac's financial reports. We believe that the current public reports of our parent company allow users of our ratings to assess the sufficiency of our financial resources. Accordingly, we do not object to a requirement with which we are already complying.

We note, however, that we believe that certain of the existing NRSROs are private, family-owned companies. They may not wish to publish their financial statements. We also believe that a requirement that an NRSRO publicly disclose their financial statements could put a chilling effect on other private companies' desire to seek recognition, which could create an unintended barrier to entry for future NRSRO candidates.

As noted above, Fitch discloses that it receives fees from issuers in connection with our ratings as well as the range of fees paid. While disclosing the percentage of total revenue that an issuer's fees represent in connection with a rating or the more extensive disclosure of the actual amounts paid by an issuer to Fitch would provide the users of ratings with more information, such disclosure would create competitive issues for Fitch.

Disclosure of the percentage of total revenue that an issuer's fees represent together with the existing public disclosure of our total revenue would allow our competitors, as well as users of our ratings, to know our revenue by client. We do not believe that it is necessary or appropriate to provide disclosure of the percentage of total revenue that an issuer's fees represent or to provide more extensive financial disclosure. We believe that the specific fees we charge and the revenue we derive from other sources are proprietary and if known by our major competitors, both of whom possess dominant market power in certain markets, will cause us competitive injury. We believe other existing NRSROs and potential NRSRO candidates would be caused similar competitive injury if required to disclose this information. We believe that the far more important disclosure is that the fee arrangement exists and the range of those fees.

<u>Standardized Rating Symbols</u>. *Should the Commission continue to rely on existing market-based standards for rating symbols and rating categories, or should specific standards be incorporated into the definition of the term "NRSRO"? If the latter, what standards are appropriate?*

NRSROs should be permitted to use the symbols and rating definitions they believe are most appropriate so long as they publicly disclose the meaning of the symbols, the related rating definitions and, most importantly, statistical studies that allow the users of the ratings to understand how the ratings perform over time.

It should be noted that Fitch does not believe that a criteria for recognition should be adherence to generally accepted industry standards. In fact, such industry standards do not exist in the case of credit rating agencies and we believe that it would be detrimental to introduce them. Ratings are opinions, and as such ratings are based on differing criteria, qualitative and quantitative, in each agency. The market benefits from this diversity of opinion and demands it. Requiring that a rating agency abide by strict standards would create a situation in which each agency would produce the same result on each credit, and there would be neither need for competing agencies nor any benefit from competing agencies. In addition, if every rating agency followed the same criteria, this would likely foster pro-cyclicality in ratings, which could lead to risk being underestimated in booms and overestimated in recessions.

Other Issues

<u>Statistical Models</u>. *Should a credit rating agency that relies solely or primarily on statistical models be able to meet the proposed NRSRO definition? If so, under what circumstances? The Commission also requests comment on guidelines for assessing the relevance and reliability of statistical models used in the ratings process.*

This is a question best answered by the users of ratings.

<u>Provisional NRSRO Status</u>. *Does the Commission's proposed NRSRO definition and approach for promoting competition address the competitive concerns raised by commenters' supporting provisional NRSROs?*

Yes.

Addressing Barriers to Entry and Anticompetitive Conduct

Fitch firmly believes in the power of competition. We also believe that there is always a demand for insightful, independent credit research.

As noted above, the NRSRO system is often cited as a barrier to entry for new rating organizations. Commenters also have expressed concerns that certain practices of rating agencies may be anticompetitive or constitute unfair practices.

If the SEC wishes to further address barriers to entry in the ratings market, ensure competition in the ratings market and address anticompetitive conduct, the Commissioners should enact rules prohibiting anticompetitive conduct by NRSROs and preclude NRSROs from engaging in conduct designed to preserve market share. Fitch believes that this is an area which would benefit from SEC regulation to protect NRSRO competition. Fitch believes that any NRSRO found to be using anticompetitive practices or unfair business practices should have their NRSRO designation revoked.

Please call me at (212) 908-0626 with any questions that you might have on our comments or to discuss this matter further at your convenience.

Very truly yours,

Charles D. Brown

Charles D. Brown
General Counsel